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2 **WEXFORD LAW**

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6 **Attorney for Defendants, JOSE ARVISO**

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 JOSE ARVISO,

15 Defendant.

Case No. CR 17-00018-CAS

**DEFENDANT'S RESPONSE TO
GOVERNMENT'S OPPOSITION TO
MOTION IN LIMINE TO EXCLUDE
CONTRABAND**

HON. CHRISTINA SNYDER

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19 **I.THE GOVERNMENT'S CONTENTION THAT THEY CAN**
20 **AUTHENTICATE THE CONTRABAND IS DUBIOUS AT BEST**
21 **SINCE THE CHAIN OF CUSTODY IS A TRAIN WRECK¹ BECAUSE**
22 **OF MANY LAW ENFORCEMENT FAUX PAS**

23 Here, the Government cannot authenticate the alleged drugs seized because there
24 are too many hands involved, including but not limited to the California Department of

25 ¹ Physical evidence must be authenticated before a court may admit it at trial. A
26 piece of physical evidence that has not been authenticated is not relevant under Rule
27 401 because "evidence cannot have a tendency to make the existence of a disputed fact
28

1 Corrections and Rehabilitation (“CDCR”), the percipient witnesses and arresting
 2 officers along with sloppy police work by the Los Angeles Police Department (LAPD),
 3 who transported and booked the defendants. *The discovery is devoid of any chain of*
 4 *custody of any contraband passed from the CDCR to the LAPD.* Moreover, the
 5 LAPD refused or failed to inventory the contraband until 60 days later while it was in
 6 the possession of the USPS, thus refusing or failing to recognize that the contraband
 7 was attributed to Mr. Arviso’s co-defendant.

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 9
 10 more or less likely if the evidence is not what which the proponent claims[.]” United
 11 States v. Branch, 970 F.2d 1368, 1370 (4th Cir. 1992). “To satisfy the requirement of
 12 authenticating or identifying an item of evidence, the proponent must produce evidence
 13 sufficient to support a finding that the item is what the proponent claims it is.” Fed. R.
 14 Evid. 901(a).

15 As the Ninth Circuit has explained,

16 *In other words, the party offering the evidence must make a prima facie*
 17 *showing of authenticity so that a reasonable juror could find in favor of*
 18 *authenticity or identification.*

19 *United States v. Gadson*, 763 F3d 1189, 1203-04 (9th Cir. 2014) (internal
 quotation omitted).

20 As part of the authentication requirement, when physical evidence is “connected
 21 with the commission of a crime, the proponent must also establish the chain of
 22 custody.” *United States v. Harrington*, 923 F.2d 1371, 1374 (9th Cir. 1991) (citing
 23 *Gallego v. United States*, 276 F.2d 914, 917 (9th Cir. 1960)). A district court may admit
 24 items of physical evidence if the Government establishes that they are in “substantially
 25 the same condition” as when they were seized[.]” and “there is a reasonable probability
 26 the article has not been changed in important respects.” *Id.* (internal quotations
 27 omitted).

1 On or about mid-morning on March 25, 2016. CDCR arrested the defendants in
2 Pasadena. The CDCR called neighboring law enforcement agencies to transport and
3 book the defendants but many agencies declined. LAPD Northeast (LAPD NE) offered
4 to book the defendants if CDCR could find transportation. Around 11 am, CDCR
5 contacted the LAPD Metro (Metro) (*See* Exhibit “A,” p. USAO_00194) who offered to
6 transport the defendants to LAPD NE. The defendants arrived to LAPD NE at
7 approximately 1425 (*Id.*, p. USAO_00205) and were booked before midnight. *Id.*, p.
8 USAO_00187.

9 ***There is a complete dearth of evidence of any documentation in regard to the***
10 ***chain of custody from the CDCR, the law enforcement agency that initially seized the***
11 ***evidence to the LAPD. The defense has made several informal discovery requests,***
12 ***only to be told that this is all the discovery that the prosecution has in its possession.***

13 The contraband appears to have been properly packaged days later on March 28,
14 2016. In addition, the package, property number P002004933, clearly has clearly
15 crossed out the name of Arviso and replaced it with co-defendant Olivia Uribe, booking
16 number 4617226. *See* Exhibit “B.” Subsequently, the package was analyzed by David
17 Purdy on March 30, 2016. *Id.*

18 Then on May 11, 2016, the US Postal Inspector requested the contraband for
19 inspection. Per USPIS Kimberly Ross, Senior Forensic Chemist, the contraband was
20 received by the USPIS on May 12, 2016. *See* Exhibit “C.” The contraband was tested
21 in August and returned after the test. *Id.*

22 While the contraband was out being tested, and 60 days after the seizure on May
23 25, 2016, the LAPD decided to inventory the property. *See* Property Report, Exhibit
24 “A,” p. USAO_00198. Later on the same date, it appears that a receipt was created for
25 the property. *Id.*, p. USAO_00200.

26 Counsel has requested a copy of the CDCR report, only to be informed that
27 the government has no such document and no relevant document for that matter from
28

1 the CDCR. In addition, there are no notes from any other law enforcement agency
2 explaining the government's faux pas in its chain of custody.

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4 **II. CONCLUSION**

5 Defendant respectfully requests that this Court exclude the any evidence related
6 to the CDCR seizure on or about March 25, 2016 (including any references thereto)
7 because the Government cannot authenticate them by establishing the chain of custody,
8 in violation of Rule 901(a).

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10 Respectfully submitted,

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By /s/ Michael S. Devereux

14 Michael S. Devereux
15 Attorney for
16 JOSE ARVISO
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